

1 HOUSE BILL NO. 506

2 INTRODUCED BY N. NICOL, C. FRIEDEL

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION
 5 INSURANCE; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO ELECT A WORKERS'
 6 COMPENSATION PLAN OR PLANS UNDER COMPENSATION PLAN NO. 1, PLAN NO. 2, OR PLAN NO. 3;
 7 AUTHORIZING THE STATE COMPENSATION INSURANCE FUND TO INSURE ITS EMPLOYEES UNDER
 8 COMPENSATION PLAN NO. 3 IF THE DEPARTMENT OF ADMINISTRATION ELECTS WORKERS'
 9 COMPENSATION INSURANCE COVERAGE FOR OTHER STATE AGENCIES UNDER COMPENSATION
 10 PLAN NO. 1 OR PLAN NO. 2; AUTHORIZING THE STATE COMPENSATION INSURANCE FUND TO
 11 CONTRACT WITH THE DEPARTMENT OF ADMINISTRATION TO SERVE AS A THIRD-PARTY
 12 ADMINISTRATOR IF THE DEPARTMENT OF ADMINISTRATION ELECTS WORKERS' COMPENSATION
 13 INSURANCE COVERAGE FOR STATE AGENCIES UNDER COMPENSATION PLAN NO. 1; PROVIDING
 14 RULEMAKING AUTHORITY; REVISING A DEFINITION; AND AMENDING SECTIONS 39-71-403, 39-71-
 15 2201, AND 39-71-2316, MCA."

16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18

19 **Section 1.** Section 39-71-403, MCA, is amended to read:

20 **"39-71-403. ~~Plan three exclusive for state agencies~~ State agency coverage -- public corporation**
 21 **coverage -- election of compensation plan by public corporations -- financing of self-insurance fund --**
 22 **exemption for university system -- definitions -- rulemaking.** (1) (a) Except as provided in [section 3] and
 23 subsection (5), if a state agency is the employer, the terms, conditions, and provisions of compensation plan
 24 No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee of this section,
 25 the department of administration shall elect workers' compensation insurance coverage on behalf of all state
 26 agencies and manage the workers' compensation insurance coverage under the terms, conditions, and
 27 provisions of compensation plan No. 1, plan No. 2, or plan No. 3. The department shall elect a compensation
 28 plan that insures all state agencies. If the department elects workers' compensation insurance coverage under

1 compensation plan No. 2, the insurer must have a financial strength rating from a major financial services
 2 entity. The state agency is the employer for the purposes of the compensation plan selected pursuant to this
 3 section. Any sums necessary to be paid under the provisions of this chapter by a state agency are considered
 4 to be ordinary and necessary expenses of the state agency. The state agency shall pay the sums into the state
 5 fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have
 6 failed to anticipate the ordinary and necessary expense in a budget, estimate of expenses, appropriations,
 7 ordinances, or otherwise.

8 (b) (i) ~~Subject to subsection (5), the department of administration, provided for in 2-15-1001, shall~~
 9 ~~manage~~ The department of administration shall elect workers' compensation insurance coverage under one or
 10 more compensation plans to provide workers' compensation insurance coverage for all state agencies, except
 11 for the state compensation insurance fund if the state compensation insurance fund exercises the option in
 12 [section 3]. The compensation plan or plans selected by the department of administration must be exclusive,
 13 compulsory, and obligatory on both the employer and the employee.

14 (ii) ~~The state fund insurer or insurers for the selected compensation plan or plans shall provide the~~
 15 ~~department of administration with all information regarding the state agencies' coverage.~~

16 (iii) ~~Notwithstanding the status of a state agency as employer in subsection (1)(a) and contingent~~
 17 ~~Contingent upon on~~ mutual agreement between the department of administration and the state fund, the state
 18 fund compensation plan No. 2 or plan No. 3 insurer, the compensation plan No. 2 or plan No. 3 insurer shall
 19 issue one or more policies for all state agencies.

20 (iv) In any year in which the workers' compensation premium due from a state agency is lower than
 21 in the previous year, the appropriation for that state agency must be reduced by the same amount that the
 22 workers' compensation premium was reduced and the difference must be returned to the originating fund
 23 instead of being applied to other purposes by the state agency submitting the premium.

24 (2) (a) ~~A public corporation, other than a state agency,~~ A public corporation, other than a state agency, may elect workers' compensation insurance
 25 coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public
 26 corporation, other than a state agency, or with the department of administration as provided in subsection (2)(b).

27 (b) Except as provided in [section 3], the department of administration may join with a public
 28 corporation to elect workers' compensation insurance coverage on behalf of all state agencies under

1 compensation plan No. 1, plan No. 2, or plan No. 3. The department shall elect a compensation plan that
 2 insures all state agencies. If the department elects workers' compensation insurance coverage under
 3 compensation plan No. 2, the insurer must have a financial strength rating from a major financial services
 4 entity. Until notes or bonds described in [section 2(3)(c)] and subsection (3) of this section are fully paid, the
 5 funds described in [section 2(2)(c)] and subsection (3)(a) of this section must remain separate.

6 (c) A public corporation ~~If electing workers' compensation insurance coverage under~~
 7 compensation plan No. 1, a public corporation may purchase reinsurance or may issue bonds or notes
 8 pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same
 9 provisions as a private employer electing compensation plan No. 1.

10 (3) (a) A public corporation, ~~other than a state agency,~~ that elects workers' compensation
 11 insurance coverage under compensation plan No. 1 may establish a fund sufficient to pay the compensation
 12 and benefits provided for in this chapter and to discharge all liabilities that are reasonably incurred during the
 13 fiscal year for which the election is effective. Proceeds from the fund ~~must~~ may be used only to pay claims
 14 covered by this chapter and for actual and necessary expenses required for the efficient administration of the
 15 fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

16 (b) (i) A public corporation, ~~other than a state agency,~~ separately or jointly with another public
 17 corporation, ~~other than a state agency,~~ may issue and sell its bonds and notes for the purpose of establishing,
 18 in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay
 19 the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not
 20 exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, of the
 21 public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the
 22 governing body of the public corporation and are payable from an annual property tax levied in the amount
 23 necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax
 24 exists despite any provision of law or maximum levy limitation, including 15-10-420, to the contrary. The
 25 revenue derived from the sale of the bonds and notes may not be used for any other purpose.

26 (ii) The bonds and notes:

27 (A) may be sold at public or private sale;

28 (B) do not constitute debt within the meaning of any statutory debt limitation; and

1 (C) may contain other terms and provisions that the governing body determines.

2 (iii) Two or more public corporations, ~~other than state agencies,~~ may agree to exercise their
3 respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the
4 powers on their behalf.

5 (iv) The fund established from the proceeds of bonds and notes issued and sold under this
6 subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess
7 insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to
8 discharge all liabilities as provided in subsection (3)(a). Subject to the total assessed value limitation in
9 subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge
10 liabilities for periods greater than 1 year.

11 (4) All money in the fund established under subsection (3)(a) not needed to meet immediate
12 expenditures must be invested by the governing body of the public corporation or the joint board created by two
13 or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be
14 credited to the fund.

15 (5) For the purposes of subsection ~~(4)(b)~~ (1)(a), the judicial branch or the legislative branch may
16 choose not to have the department of administration manage its workers' compensation policy.

17 (6) The department of administration may adopt rules to implement ~~subsection (1)(b)(i)~~ this
18 section.

19 (7) As used in this section, the following definitions apply:

20 (a) "Public corporation" ~~includes~~ has the same meaning as provided in 39-71-116 except that a
21 state agency is excluded and the Montana university system is included.

22 (b) (i) "State agency" means:

23 (A) the executive branch and its departments and all boards, commissions, committees, bureaus,
24 and offices;

25 (B) the judicial branch; and

26 (C) the legislative branch.

27 (ii) The term does not include the Montana university system."
28

1 **NEW SECTION. Section 2. Election of compensation plan No. 1 by department of**
2 **administration -- rulemaking.** (1) If the department of administration elects workers' compensation insurance
3 coverage under compensation plan No. 1 as provided in 39-71-403, the department of administration is subject
4 as a compensation plan No. 1 insurer to the provisions of Title 39, chapter 71, except for parts 21 and 26.

5 (2) The department of administration shall:

6 (a) ensure that the compensation plan is operated in an actuarially sound manner and that the
7 compensation plan maintains reserves sufficient to liquidate incurred but not yet reported claim liability;

8 (b) issue separate notices of workers' compensation insurance coverage to state agencies subject
9 to the provisions of [section 3]; and

10 (c) establish a self-insurance workers' compensation proprietary fund type to be used only to:

11 (i) pay claims for compensation and benefits provided for in this chapter and for actual and
12 necessary expenses required for the efficient administration of claims and the fund and for equipment or
13 programs to reduce the incidence of claims;

14 (ii) discharge all liabilities that are reasonably incurred during the fiscal year for which the election
15 is effective. The time limit of this subsection (2)(c)(ii) does not apply to liabilities accrued for the compensation
16 and benefits under subsection (2)(c)(i), which may extend for more than 1 year.

17 (iii) pay the costs of reinsurance or the costs associated with the sale and issuance of bonds or
18 notes provided for in this section, including debt service; and

19 (iv) pay assessments required under this chapter for any other compensation plan No. 1 insurer.

20 (3) The department of administration may:

21 (a) purchase reinsurance;

22 (b) contract with a third-party administrator;

23 (c) through the board of investments, issue bonds or notes to cover unfunded liabilities caused by
24 a catastrophic event or for the purpose of establishing, in whole or in part, the self-insurance workers'
25 compensation proprietary fund provided for under subsection (2)(c). Bonds or notes issued under this
26 subsection (3)(c) do not constitute a general obligation of the state and are not general obligation bonds. The
27 bonds or notes must be paid for with the proceeds from the self-insurance workers' compensation proprietary
28 fund established under subsection (2)(c).

1 (d) adopt rules to implement the provisions of this section.

2
3 **NEW SECTION. Section 3. State compensation insurance fund coverage.** (1) If the department of
4 administration elects workers' compensation insurance coverage under compensation plan No. 1 or plan No. 2
5 under the provisions of 39-71-403, the state compensation insurance fund provided for in 39-71-2313 may
6 choose to provide and manage workers' compensation insurance coverage for its own employees under
7 compensation plan No. 3.

8 (2) If the state compensation insurance fund chooses workers' compensation insurance coverage
9 under compensation plan No. 3 as provided for in subsection (1), the state compensation insurance fund is
10 exempt from 39-71-403.

11 (3) For the purposes of this chapter, if the state compensation insurance fund elects workers'
12 compensation insurance coverage under compensation plan No. 3, the state compensation insurance fund is
13 the employer and the terms, conditions, and provisions of compensation plan No. 3 are exclusive, compulsory,
14 and obligatory on both the employer and the employee.

15
16 **Section 4.** Section 39-71-2201, MCA, is amended to read:
17 **"39-71-2201. Election to be bound by compensation plan -- captive reciprocal insurers.** (1) Any
18 employer ~~except those specified in 39-71-403~~ may, by filing an election to become bound by compensation
19 plan No. 2, insure the employer's liability to pay the compensation and benefits provided by this chapter with
20 any insurance company authorized to transact ~~such workers' compensation~~ business in this state.

21 (2) Any employer electing to become bound by compensation plan No. 2 shall make the election
22 on the form and in the manner prescribed by the department.

23 (3) A captive reciprocal insurer established by or on behalf of an employer or a group of employers
24 is considered to be a compensation plan No. 2 insurer. Pursuant to 33-28-205, a captive reciprocal insurer may
25 not be a member of an insurance guaranty association or guaranty fund."

26
27 **Section 5.** Section 39-71-2316, MCA, is amended to read:
28 **"39-71-2316. Powers of state fund.** (1) For the purposes of carrying out its functions, the state fund

1 may:

2 (a) insure any employer for workers' compensation and occupational disease liability as the
3 coverage is required by the laws of this state and, as part of the coverage, provide related employers' liability
4 insurance upon approval of the board;

5 (b) sue and be sued;

6 (c) enter into contracts relating to the administration of the state fund, including claims
7 management, servicing, and payment;

8 (d) collect and disburse money received;

9 (e) except as provided in subsection (1)(f), use the uniform classification system as required in 33-
10 16-1023 and charge premiums for the classifications so that the state fund will be neither more nor less than
11 self-supporting;

12 (f) continue the use of special classification codes that were in use prior to January 1, 2016, for
13 agriculture, municipalities, towns, cities, counties, and state agencies. The board shall file with the
14 commissioner rates and supplementary rate information for these special classifications.

15 (g) use the uniform experience rating plan provided for in 33-16-1023, except upon approval of the
16 board may adopt experience modification thresholds for use by the state fund for its insured employers;

17 (h) pay the amounts determined to be due under a policy of insurance issued by the state fund;

18 (i) hire personnel;

19 (j) declare dividends if there is an excess of assets over liabilities. However, dividends may not be
20 paid until adequate actuarially determined reserves are set aside.

21 (k) adopt and implement one or more alternative personal leave plans pursuant to 39-71-2328;

22 (l) upon approval of the board, contract with licensed resident insurance producers;

23 (m) upon approval of the board, enter into agreements with licensed workers' compensation
24 insurers, insurance associations, or insurance producers to provide workers' compensation insurance coverage
25 in other states to Montana-domiciled employers insured with the state fund;

26 (n) upon approval of the board, expend funds for scholarship, educational, or charitable purposes;

27 (o) upon approval of the board, including terms and conditions, provide employers coverage under
28 the federal Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901, et seq., the federal Merchant

1 Marine Act, 1920 (Jones Act), 46 U.S.C. 688, and the federal Employers' Liability Act, 45 U.S.C. 51, et seq.;

2 (p) perform all functions and exercise all powers of a private insurance carrier that are necessary,
3 appropriate, or convenient for the administration of the state fund; and

4 (q) upon approval of the board, contract with the department of administration to serve as a third-
5 party administrator if the department of administration elects workers' compensation insurance coverage for
6 state agencies under compensation plan No. 1.

7 (2) The state fund shall include a provision in every policy of insurance issued pursuant to this part
8 that incorporates the restriction on the use and transfer of money collected by the state fund as provided for in
9 39-71-2320."

10
11 NEW SECTION. Section 6. Codification instruction. [Sections 2 and 3] are intended to be codified
12 as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to
13 [sections 2 and 3].

14
15 NEW SECTION. Section 7. Severability. If a part of [this act] is invalid, all valid parts that are
16 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
17 the part remains in effect in all valid applications that are severable from the invalid applications.

18 - END -